

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 14-V-03469-LMA
)	
MANTON LAWRENCE SELBY, II,)	DECISION
)	
Member No. 44350)	
)	
<u>A Member of the State Bar.</u>)	

Introduction¹

The issue in this case is whether petitioner Manton Lawrence Selby, II, has demonstrated, to the satisfaction of this court, his rehabilitation, present fitness to practice, and present learning and ability in the general law so that he may be relieved from his actual suspension from the practice of law. (Std. 1.4(c)(ii).)²

For the reasons set forth in this decision, the court finds that petitioner has shown, by a preponderance of evidence, that he has satisfied the requirements of standard 1.4(c)(ii).

Therefore, the petition is **GRANTED**.

¹ Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct, and all statutory references are to the Business and Professions Code. Furthermore, all references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

² Effective, January 1, 2014, the former Rules of Procedure of the State Bar of California (Rules of Procedure) were revised and standard 1.4(c)(ii) was renumbered as standard 1.2(c)(1). Because petitioner was ordered to comply with standard 1.4(c)(ii), the former Rules of Procedure are applicable to this proceeding.

Significant Procedural History

On June 5, 2013, petitioner filed a verified petition for relief from actual suspension in State Bar Court case no. 13-V-13079. On July 22, 2013, the Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed an opposition to the petition. On September 3, 2013, this court, citing a lack of sufficient evidence to make an accurate determination regarding petitioner's rehabilitation and fitness to practice, filed a decision denying petitioner's June 5, 2013 petition.

On June 18, 2014, petitioner filed the present verified petition for relief from actual suspension (State Bar Court case no. 14-V-03469). On August 4, 2014, the State Bar filed an opposition to the present petition. Senior Deputy Trial Counsel Erica Dennings represented the State Bar. Petitioner represented himself in pro-per. A hearing was held on October 15, 2014. The court took the petition under submission that same day.

Findings of Fact

Petitioner was admitted to the practice of law in California on June 26, 1969, and has been a member of the State Bar at all times since that time.

Petitioner's Underlying Disciplinary Background

On September 14, 2011, the California Supreme Court issued an order in petitioner's underlying matter, case no. S194615 (State Bar Court case nos. 08-O-12273 (09-O-14111)). In its order, the Supreme Court directed that petitioner be suspended from the practice of law for three years, execution of that period of suspension was stayed, and he was placed on probation for four years, including an eighteen-month minimum period of actual suspension. It was further ordered that petitioner would remain suspended until he demonstrated his rehabilitation, present fitness to practice, and present learning and ability in the general law pursuant to standard 1.4(c)(ii).

This discipline involved misconduct in two client matters. In the first client matter, petitioner was hired by Vivian Cabugos (Cabugos) to represent her in union procedures and/or a civil suit related to her termination. In this matter, petitioner charged Cabugos \$5,000, but failed to take any action on her behalf between June 18, 2005 and June 25, 2007, and between November 8, 2007 and July 15, 2009. Petitioner also failed to correct Cabugos's mistaken belief that hearings were scheduled on her behalf and failed to refund any part of the \$5,000 in unearned fees he received from her. Consequently, petitioner was found to have violated rule 3-110(A) [failure to perform legal services with competence]; section 6068, subdivision (m) [failure to communicate]; and rule 3-700(D)(2) [failure to refund an unearned fee].

In the second matter, petitioner was retained by Bernard Silver (Silver) to obtain an annulment. Silver paid petitioner \$1,500 and petitioner began working on the matter. Shortly thereafter, Silver terminated petitioner and requested a full refund. Petitioner refused to provide a refund and Silver sued petitioner in small claims court for the refund of the fee. The small claims court awarded a \$942 judgment to Silver. Petitioner did not pay the judgment until Silver retained counsel to collect it. By failing to promptly refund unearned fees, even after the awarding of the judgment, petitioner willfully violated rule 3-700(D)(2) [failure to refund an unearned fee].

In mitigation, petitioner suffered emotional difficulties at the time of his professional misconduct. The parties stipulated that, at the time the stipulation was signed, petitioner was "taking steps to address his issues." In aggravation, petitioner had four prior records of discipline involving a similar pattern of behavior. In addition, petitioner caused significant harm to his client, Cabugos.³

³ Although the stipulation stated that \$5,000 was due and payable to Cabugos, no restitution was ordered because Cabugos continued to be represented by petitioner.

Rehabilitation and Present Fitness to Practice Law

As illustrated below, petitioner argued that he has been rehabilitated and possesses the requisite present fitness to practice law. The State Bar opposed this assertion.

Petitioner's Acceptance of Responsibility and Understanding

Petitioner has demonstrated an understanding and insight into the nature of his misconduct. Petitioner accepted responsibility for his actions. He recognizes the way depression impacted him and his ability to service his clients. Petitioner and his wife have developed the skills to recognize when his depression may be an issue and the mechanics to deal with it.

Petitioner also sent a letter of apology to Cabugos on or about February 17, 2014. In this letter, petitioner expressed his remorse for the way he handled her matter.

Petitioner's Probation, Therapy, and Counseling

Petitioner is currently in compliance with all of the probation conditions attached to the underlying discipline. He has completed Ethics School and taken and passed the Multistate Professional Responsibility Examination (MPRE).

Mary Paige, Psy.D., has been treating petitioner on a weekly or bi-weekly basis since July 8, 2011.⁴ She described petitioner as always on time or early and vigorously involved in his treatment. In Dr. Paige's opinion, petitioner has learned a great deal about himself in the past three years. Dr. Paige asserted that petitioner is humble and has taken full responsibility for his actions. She describes petitioner as a very positive and cheerful character who has shown outstanding dedication and willingness over the last several years to overcome his depression.

From November 2010 to the spring of 2013, petitioner also participated in the Lawyer Assistance Program (LAP). One of the requirements of LAP was to attend weekly meetings. Each meeting focused on the individual issues of each member of the group. Through these

⁴ Prior to that, petitioner treated with Dr. Patricia Scott from October 13, 2010 to the spring of 2011.

meetings, petitioner realized that he had co-dependency issues. Petitioner therefore also began attending Co-Dependents Anonymous (CODA) meetings.

Petitioner reports that he is currently not depressed, and hasn't been for a substantial period of time. He continues to take Fluoxetine and is currently stabilized. In the event that petitioner is relieved from actual suspension, his doctors advise that he remain on the same dosage of Fluoxetine for some period of time.⁵ Petitioner asserts that he will follow his doctors' advice.

Petitioner's Character References

In support of his petition, petitioner submitted nine declarations from favorable character witnesses. Petitioner also presented testimony from two of these witnesses and from his wife. Petitioner's character witnesses included: Alan Azer Dressler, Esq.; Eugene J. Chiarelli, Esq.; C. Martin Gibson, Esq.; Wendy Marie Gibson, Esq.; Amy Kalish; S. David Kalish; Janine Marie Schengel; Joshua Eliran; Camara Scremin; and Julie Selby.

Petitioner's character witnesses praised his dedication to his clients, as well as his skill and insight as a litigator. These witnesses also demonstrated a general understanding of the underlying misconduct, petitioner's issues with depression, and the steps he has taken toward rehabilitation.

Money Owed to Cabugos

A significant issue in the court's prior decision denying petitioner's June 5, 2013 petition involved the issue of whether petitioner still owed restitution to Cabugos. In or about August 2013, the Client Security Fund (CSF) paid Cabugos \$5,000, representing petitioner's unearned fees. Petitioner did not object to this payout and began reimbursing the CSF in May 2014. Petitioner has now fully reimbursed the CSF.

⁵ Petitioner is also treating with Dr. Adam Rosenblatt.

Petitioner Holding Himself Out as Entitled to Practice

At some point prior to his actual suspension, petitioner set up an account at LinkedIn.com, identifying him as an attorney. Petitioner credibly testified that he forgot about this account and therefore neglected to delete or revise it upon his actual suspension. Once the State Bar raised this issue, petitioner promptly contacted LinkedIn and canceled his account. Petitioner's testimony on this subject was bolstered by the fact that there was no indication that he actually practiced law during his period of actual suspension.⁶

Present Learning and Ability in the General Law

The State Bar did not contest that petitioner has the present learning and ability in the general law. Petitioner completed the State Bar's Ethics School and took and passed the MPRE. Petitioner has attended 40.5 hours of continuing legal education (MCLE) credits.

Based on the record as a whole, the court finds that petitioner has demonstrated by a preponderance of the evidence that he possesses present learning and ability in the general law.

Discussion

In this proceeding, petitioner has the burden of proving by a preponderance of the evidence that he has satisfied the conditions of standard 1.4(c)(ii). The court looks to the nature of the underlying misconduct as well as the aggravating and mitigating circumstances surrounding it to determine the point from which to measure petitioner's rehabilitation, present learning and ability in the general law, and present fitness to practice before being relieved from his actual suspension. (*In the Matter of Murphy* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 571, 578.)

⁶ The State Bar also identified a second website – MillValley.Patch.com – that listed petitioner as an attorney during the period of his actual suspension. It is unclear if petitioner had any control over the content on this website, but the court finds that he did not knowingly or intentionally use it to hold himself out as entitled to practice during his actual suspension.

To establish rehabilitation, the court must first consider petitioner's prior misconduct. The amount of evidence of rehabilitation varies according to the seriousness of the misconduct at issue. Second, the court must examine petitioner's actions since the imposition of his discipline to determine whether his actions, in light of the prior misconduct, sufficiently demonstrate rehabilitation by a preponderance of the evidence. (*In the Matter of Murphy, supra*, 3 Cal. State Bar Ct. Rptr. at p. 581.)

Petitioner must also show strict compliance with the terms of probation in the underlying disciplinary matter; exemplary conduct from the time of the imposition of the prior discipline; and "that the conduct evidencing rehabilitation is such that the court may make a determination that the conduct leading to the discipline ... is not likely to be repeated." (*In the Matter of Murphy, supra*, 3 Cal. State Bar Ct. Rptr. at p. 581.)

In this case, the conduct that prompted the court to initially take action was serious due to petitioner's prior record of discipline and the harm suffered by Cabugos. Over the past few years, petitioner has made substantial gains in his rehabilitation process. He has recognized his misconduct, demonstrated remorse, and stabilized the depression problems that contributed to the underlying misconduct. Rather than harboring ill will or resentment, petitioner has learned from this experience and looks forward to the day he can resume the practice of law.

The court denied petitioner's previous petition for relief from actual suspension in large part due to unanswered questions regarding petitioner's present rehabilitation and any unearned fees still owed to Cabugos. The court finds that petitioner has now adequately addressed both of these issues. In this proceeding, petitioner focused less on his skills as an attorney and more on his present rehabilitation and current endeavors. Further, although petitioner feels that he

subsequently earned the fees paid by Cabugos, he did not oppose the CSF's payment on those fees and has since reimbursed the CSF in full.⁷

With respect to petitioner's present learning and ability in the general law, the court finds that petitioner has proven by a preponderance of the evidence that he currently possesses present learning and ability in the general law.

Therefore, based on the above, the court finds that petitioner has demonstrated, by a preponderance of evidence, that he is rehabilitated, has present fitness to practice law, and has present learning and ability in the general law.

Conclusion

The court finds that petitioner Manton Lawrence Selby, II, has satisfied the requirements of standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct by demonstrating, by a preponderance of the evidence and to the satisfaction of the court, that he is rehabilitated, presently fit to practice law, and has present learning and ability in the general law.

Accordingly, the petition for relief from actual suspension from the practice of law is hereby **GRANTED**.

Petitioner will be entitled to resume the practice of law in this state when all of the following conditions have been satisfied:

1. This order has become final, which includes the expiration of the time for seeking reconsideration and review (Former Rules Proc. of State Bar, rules 224, 300, 639, and 640);
2. Petitioner has paid all applicable State Bar fees and previously assessed costs (Bus. & Prof. Code, §§ 6086.10 and 6140.7); and

⁷ While the State Bar argues that petitioner's payments to the CSF were not prompt, the court finds that they were reasonable, considering petitioner's present financial situation. Further, the State Bar has sent petitioner mixed messages by negotiating the underlying stipulation which included a finding of unearned fees, but no requirement that petitioner make restitution to Cabugos due to the understanding that petitioner would continue to work for Cabugos.

3. Petitioner has fully complied with any other requirements for his return to active membership status and is otherwise entitled to practice law.

Dated: November _____, 2014

LUCY ARMENDARIZ
Judge of the State Bar Court